

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
AIR AMBULANCE TASK FORCE
INTERIM CONFERENCE CALL
JUNE 8, 2017
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Air Ambulance Task Force held an interim meeting via conference call on Thursday, June 8, 2017 at 10:00 A.M. (EDT).

Representative Jeff Greer (KY), Chair of the Task Force, presided.

Other members of the Task Force present were:

Rep. Greg Cromer, LA	Asm. Kevin Cahill, NY
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Asm. Will Barclay, NY	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

DISCUSSION OF TASK FORCE'S COURSE OF ACTION TO HELP SOLVE AIR
AMBULANCE BALANCE BILLING PROBLEM

Rep. Greer stated that, above all, he hopes to have an open discussion on the issues regarding air ambulances and balance billing so that the Task Force could gain a better understanding of the underlying reasons for which there are disputes and then draft an acceptable dispute resolution process that meets the needs of all stakeholders. Rep. Greer further stated that he hopes a good rapport can be developed among both sides of the issues with the end result being that health insurers cover emergency air ambulance services.

Rep. Greer stated that he does not support the previously discussed Task Force Resolution that supported S. 471, "The Isla Rose Life Flight Act" ("Tester Bill") because: a.) he wants the Task Force to further discuss and analyze the issues surrounding air ambulances before the Task Force takes a position; and b.) he believes the Tester Bill will never receive proper consideration since it is sponsored by the Minority party. Rep. Greer stated that at the NCOIL Summer Meeting in Chicago, he would like the Task Force to hold an open and robust discussion and afterwards, the Task Force can again meet with the ultimate goal being a Model Act that the Health Committee could consider at the NCOIL Annual Meeting in November. Rep. Greer stated that he believes a State solution to these issues must be found before it is passed over to the U.S. Congress.

Asm. Cahill stated that the Task Force was formed with the purpose of providing advice to the Health Committee, which would consider whether or not to then send said advice to the Executive Committee for consideration. Asm. Cahill stated that he agreed that the Tester Bill probably does not have a good chance of becoming law, which is why the

Task Force Resolution was amended to remove references to the Tester Bill and therefore reshape the Resolution as a “call on Congress” to help solve these problems by exempting matters properly governed by the McCarran-Ferguson Act from the scope of the Airline Deregulation Act of 1978 (ADA). Asm. Cahill stated that getting that concept on the radar screen of State legislators across the country will help, especially since the Task Force, and NCOIL, is bi-partisan.

Asm. Cahill further stated it would be a disservice to everyone involved with these issues to draft and propose a Model Law that would have a high probability of getting struck down as preempted by the ADA. Therefore, the “guidelines” that were drafted and distributed to the Task Force demonstrate a product that could be adopted by the Task Force and sent to States, in essence saying “because of the large preemptive scope of the ADA, NCOIL does not feel currently equipped to draft Model legislation in this area. However, these are guidelines of what we believe States can currently do to help solve problems associated with air ambulances, and we will return to the issue when it is clearer as to what can and can’t be done on the State level.” Asm. Cahill then made a Motion for the Task Force to: a.) adopt the Resolution; b.) adopt the guidelines; and c.) leave it up to the discretion of Chairman Greer as to whether the guidelines would be sent out to the States, or forwarded to the Health Committee for consideration. Asm. Cahill stated that this would show that NCOIL is serious about these issues and is working hard to do what it can given the pervasiveness of Federal preemption. Rep. Keiser seconded the Motion.

Rep. Greer stated that he does not want to vote now on a Resolution and guidelines since the Task Force has not had a chance to sit down together in-person. There has not been an adequate amount of time to fully analyze these issues. Rep. Cromer agreed with Rep. Greer. Asm. Cahill stated that he sees some value in the Task Force meeting and discussing the issues further but one of the main reasons the Task Force was formed was to allow work product to form faster than it would have if treated like an agenda topic during the Health Committee. Rep. Greer stated that he thought the revised Resolution and guidelines were distributed without enough time to fully analyze them, and that he would like to hear from more insurance companies on these issues, not just American’s Health Insurance Plans (AHIP). Asm. Cahill then withdrew his earlier Motion and requested that the Task Force review the Resolution and guidelines prior to meeting in Chicago. Rep. Keiser then withdrew his second.

Rep. Cromer stated that he would like the Task Force to have another conference call before meeting in Chicago. Rep. Greer stated that a call could be arranged for Task Force members. Commissioner Tom Considine, NCOIL CEO, stated that scheduling a call is not a problem but the call would need to be open to the public and not held only for Task Force members.

Angela Perry from Consumers Union stated that Consumers Union is very involved with these issues and has a report and several articles that detail the problems associated with air ambulances. Ms. Perry offered to distribute those materials to the Task Force. Ms. Perry also inquired as to how the Resolution was drafted. Rep. Greer referred Ms. Perry to NCOIL Support Services staff for questions about the Resolution.

Ron Jackson from the American Insurance Association (AIA) stated that the issues surrounding air ambulances can arise not just in health insurance, but in other lines of insurance such as workers’ compensation. Mr. Jackson urged representatives in other

lines of insurance to get involved in the Task Force and noted the case of *PHI Air Medical, LLC v. Texas Mutual Insurance Company, et al.*, held that certain Texas Workers' Compensation Act (TWCA) provisions were not preempted by the ADA – that case is currently on appeal.

Rep. Greer stated that when discussing these issues it would be unfair to put the blame on either side and that the goal of the Task Force should be to eventually draft and pass a Model Act.

Both Christopher Eastlee from The Association of Air Medical Services (AAMS) and Dianne Bricker of AHIP offered their respective organizations as resources for the Task Force to use as they further consider these issues.

Sean Dugan from the National Association of Insurance Commissioner (NAIC) stated that NAIC has been working with Congressman Tester's office and helped write S. 471. Mr. Dugan stated that NAIC believes there is an appetite for S. 471 in the current Congress; that it is not a partisan issue. Mr. Dugan stated that the Aircraft Owners and Pilots Association (AOPA) is a powerful trade group and that they have made it clear that the biggest holdup in supporting S. 471 is their concern that it could affect other areas of the aviation industry outside of air ambulances. Mr. Dugan stated that having members of the Task Force reach out to AOPA to discuss the issue and explain the nature of the state-based system of insurance regulation would go a long way in seeing S. 471 progress. Rep. Greer stated that he respected Mr. Dugan's opinion but is very doubtful of seeing S. 471 progress.

ADJOURNMENT

There being no further business, the Committee adjourned at 10:50 A.M